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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,990	07/21/2005	Roland C Santa Ana	KBORI-0002	7826
64275	7590	10/28/2008	EXAMINER	
General Counsel, P.C.			GRANT, ALVIN J	
6862 Elm Street				
SUITE 800			ART UNIT	PAPER NUMBER
McLean, VA 22101			3723	
			MAIL DATE	DELIVERY MODE
		10/28/2008		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,990	Applicant(s) SANTA ANA, ROLAND C
	Examiner ALVIN J. GRANT	Art Unit 3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 July 2008.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 20,22 and 24-26 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 20,22 and 24-26 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-146/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 20 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kotschner et al. 6,339,974 in view of Te 6,571,666.

Kotschner et al. discloses a hammerhead that includes a handle, a stationary hammerhead affixed to the handle a magnetic core disposed within the hammerhead in magnetic communication with nail retention groove. Kotschner et al. does not specifically disclose multiple grooves having partially frustoconical interior portions. Te (Fig. 12) discloses a hammer head having multiple grooves having partially frustoconical interior portions so as to accommodate multiple nails having frustoconical portions at the heads thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the hammerhead of Kotschner et al. to have multiple grooves having partially frustoconical interior portions as taught by Te so as to accommodate multiple nails having frustoconical portions at the heads thereof.

3. **Claims 24 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Caspall 4,723,582 in view of Hu 6,283,449.

Caspall discloses the claimed invention (see Figs. 2 and 7) except for each of the claws terminating in a nail removal void that differs in size one from the other. Hu discloses a hammer in which each of the claws terminate in a nail removal void that differs in size one from another so as to effectively manipulate nails having differing sizes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made each of the claws of Caspall's hammer to terminate in a nail removal void that differs in size one from the other as taught by Hu so as to effectively manipulate nails having differing sizes.

4. **Claims 26** is rejected under 35 U.S.C. 103(a) as being unpatentable over Caspall in view of Hu and in further view of Te.

Caspall, Hu and Te are described above. Caspall as modified by Hu above discloses the claimed invention except for a magnetized head having multiple peripheral nail-retention grooves. Te discloses a hammer having multiple peripheral nail-retention grooves so as to ensure that there is a variety of nails readily available for use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the hammer head of the modified Caspall to have multiple peripheral nail-retention grooves as taught by Te so as to ensure that there is a variety of nails readily available for use.

Response to Arguments

5. Applicant's arguments filed 7/30/08 have been fully considered but they are not persuasive.

- In response to applicant's arguments that the combination of US 6,339,974 (to Kotschner) and US 6,571,666 (to Te) does not details of the grooves as claimed in the amended and newly added claims, the combination of Kotschner and Te shows the invention. The additional details relating to the shapes of the grooves are a matter of design choice. It would have been an obvious matter of design choice to make the different portions of the various portions of the grooves of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.
- In response to applicant's arguments that neither US 4,723,582 (to Caspell) nor US 6,283,449 (to Hu) teach or disclose the flared claws as shown in Exhibit 5, Caspall shows the flared feature and Hu shows the claw, the combination of Caspall (Fig. 2) and Hu (Fig. 7) shows this feature.
- In response to applicant's arguments that the combination of Caspell and Hu does not show the variable elevations h1 and h2, these features are shown best in Fig. 2 at 25 of Caspell.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALVIN J. GRANT whose telephone number is (571)272-4484. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. J. G./
Examiner, Art Unit 3723

/Joseph J. Hail, III/
Supervisory Patent Examiner, Art Unit 3723